

FIRST 5 COMMISSION OF SAN DIEGO
EXHIBIT B – STANDARD TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR

- 1.1 INDEPENDENT CONTRACTOR.** Contractor is, for all purposes arising out of this Agreement, an independent contractor, and neither Contractor nor Contractor's employees shall in any event be entitled to any benefits to which Commission or County employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, and injury leave or other leave benefits.
- 1.2 CONTRACTOR'S EMPLOYEES AND EQUIPMENT.** Contractor agrees that Contractor has secured or shall secure at Contractor's own expense all persons, employees and equipment required to perform the services required under this Agreement and that all such services shall be performed by Contractor, or under Contractor's supervision, by persons authorized by law to perform such services. If any arrangement is made whereby employees of Commission or County are used by Contractor and are subject to Contractor's supervision and control, they shall, while engaged in such work be considered for all purposes, as employees, servants, or agents of Contractor and not of Commission or County, irrespective of party paying them.
- 1.3 RESPONSIBILITY FOR EQUIPMENT.** Neither Commission nor County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by Commission or County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless Commission or County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other contractors, Commission or County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
- 1.3.1 Contractor shall repair or replace, at Contractor's expense all Commission or County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 1.4 NON-EXPENDABLE PROPERTY ACQUISITION.** Commission retains title to all non-expendable property that Contractor may acquire with funds from this Agreement, including property acquired by lease purchase agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 (except Child Abuse Prevention and Intervention Treatment funded) or more and a normal life expectancy of more than one year without the prior written approval of Contracting Officer Technical Representative. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition. Inventory records on expendable equipment shall be retained, and shall be made available to the Commission or County upon request, for at least three years following date of disposition.
- 1.5 RIGHT TO ACQUIRE EQUIPMENT AND SERVICES.** Nothing in this Agreement shall prohibit the Commission or County from acquiring the same type of equivalent equipment and/or service from other sources, when deemed by the Commission or County to be in its best interest.
- 1.6 DEFENSE AND INDEMNITY.** Neither Commission nor County shall not be liable for, and Contractor shall defend and indemnify Commission or County and its officers, agents, employees and volunteers against any and all claims, deductibles, self-insured retentions, demands, liability, judgements, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (collectively, claims), which arise out of or in any way connected to the work covered by this Contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its officers, employees, agents, contractors, licensees, or servants, including without limitation, claims caused by the concurrent act, error, omission or negligence, whether active or passive, of Commission or County, and/or its agents, officers, employees or volunteers. However, Contractor shall have no obligation to defend or indemnify Commission or County from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of Commission or County or its agents or employees.

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1.7 INSURANCE. Before commencement of work, Contractor shall submit Certificates of Insurance evidencing that Contractor has obtained for the period of the contract, from generally recognized responsible insurers, insurance in the following forms of coverage and minimum amounts specified:

1.7.1 Required General Liability Insurance Coverage. Contractor shall procure either Comprehensive Liability Insurance or Commercial General Liability Insurance in the amounts and form set forth below:

1.7.1.1 Comprehensive General Liability insurance. A policy of Comprehensive General Liability Insurance with combined single limit (CSL) per occurrence of not less than \$1,000,000 per occurrence;

OR

1.7.1.2 Commercial General Liability Insurance. A policy of Commercial General Liability Insurance which provides limits of not less than:

(a) Per Occurrence:	\$1,000,000
(b) Project Specific Aggregate:	\$2,000,000
(c) Products/Completed Operations	\$1,000,000
(d) Personal & Advertising Injury limit:	\$1,000,000

For either type of insurance, deductibles shall be declared to and approved by the County's Risk Manager, acting on behalf of the Commission.

1.7.1.3 Required General Liability Policy Coverage. Any general liability policy provided by Contractor hereunder shall include the following coverage:

- (a) Premises and Operations
- (b) Products/Completed Operations with limits of at least one million dollars (\$1,000,000) per occurrence to be maintained for three (3) years following Acceptance of the work by the Commission.
- (c) Contractual Liability expressly including liability assumed under the Agreement.
- (d) Independent Contractor's Liability.

1.7.1.4 Additional Insured Endorsement. Any general liability policy provided by Contractors hereunder shall contain an endorsement which applies its coverage to the Commission or County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of Commission or County, individually and collectively, as additional insureds.

1.7.1.5 Primary Insurance Endorsement. The coverage afforded by the additional insured endorsement described above shall apply as primary insurance, and any other insurance maintained by the Commission or County, the members of the Board of Supervisors of the County, or its officers, agents, employees and volunteers, or any Commission or County self-funded program, shall be excess only and not contributing with such coverage.

1.7.1.6 Form of General Liability Insurance Policies. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnity agreement contained in the Agreement relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, Commission may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, any umbrella and as broad as possible excess liability coverage to achieve the total limits indicated above.

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- 1.7.1.7 Waiver of Subrogation. Contractor and Commission or County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled “Indemnity” of the Agreement), but only to the extent that the proceeds received from any policy of liability insurance carried by Commission or County or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be standard waiver of rights of subrogation against Commission or County by the insurance company issuing said policy or policies.
- 1.7.2 Professional Errors and Omissions Liability Insurance.
- 1.7.2.1 Contractor providing and/or engaging the services of any type of professional whose failure due to mistake or deficiency in design, formula, plans, specifications, advisory, technical, medical or other services could result in liability shall obtain professional errors and omissions liability insurance in an amount of not less than one million dollars (\$1,000,000) per claim, with an aggregate limit or not less than two million dollars \$2,000,000. If this policy contains a self retained limit, it shall not be greater than ten thousand dollars (\$10,000) per occurrence/event; if the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, Commission may require additional coverage to be purchased by Contractor to restore the required limits. The policy shall include limited contractual liability coverage. This coverage shall be maintained for a minimum of two (2) years following termination or completion of Contractor’s work pursuant to the Agreement.
- 1.7.2.2 Sexual Misconduct. Contractor providing and/or engaging services in which minors are present shall maintain coverage for improper sexual misconduct including, but not limited to, coverage for negligent supervision and hiring in the amount of not less than one million dollars (\$1,000,000) per claim, with an aggregate limit of not less than two million dollars (\$2,000,000). Any deductible or self-insured retention on this policy shall be declared to an approved by County’s Risk Manager, acting on behalf of the Commission.
- 1.7.3 Comprehensive Automobile Liability Insurance. Contractors shall procure Comprehensive Automobile Liability Insurance written for bodily injury, including death, and property damage, however occasioned, occurring during the policy term, in the amount of not less than one million dollars (1,000,000), combined single limit per occurrence, applicable to all owned, non-owned and hired vehicles. This coverage shall include contractual liability.
- 1.7.4 Statutory Workers’ Comprehensive and Employer’s Liability Insurance. Unless the Contractor is a sole proprietorship, Contractor shall maintain a policy of California Workers’ Compensation coverage in statutory amount and Employer’s Liability coverage for no less than one million dollars (\$1,000,000) per occurrence for all employees of Contractor engaged in services or operations under the Agreement. Coverage shall include the following endorsements, copies of which shall be provided to the Commission:
- (a) Broad Form All-States endorsement
- (b) Waiver of Subrogation endorsement
- 1.7.5 Subcontractor’s Insurance. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Agreement. If any Subcontractor’s coverage does not comply with the forgoing provisions, Contractor shall indemnify and hold Commission or County harmless of and from any damage, loss, cost or expense, including attorney’s fees, incurred by Commission or County as a result thereof.
- 1.7.6 General Provisions
- 1.7.6.1 Evidence of Insurance. Contractor shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Agreement, deliver to Commission certificate of insurance evidencing the same, together with appropriate

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separate endorsements thereto, evidencing that Contractor has obtained such coverage for the period of the Agreement. Contractor shall deliver certified copies of the actual insurance policies specified herein, within thirty days (30) after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to Commission within thirty (30) days prior to the expiration of the term of any policy required herein. Contractor shall permit Commission at all reasonable times to inspect any policies of insurance of Contractor which Contractor has not delivered to Commission.

- 1.7.6.2 Claims Made Coverage. If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
- (a) The policy retroactive date coincides with or precedes Contractor’s commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
 - (b) Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.
 - (c) If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Agreement.
 - (d) The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- 1.7.6.3 Failure to Obtain or Maintain Insurance; Commission or County Remedies. Contractor’s failure to procure the insurance specified herein, or failure to deliver certified copies of appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Agreement, and Commission may, at its option, terminate the Agreement for any such default by Contractor.
- 1.7.6.4 No Limitation of Obligations. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor, and any approval of said insurance by the Commission or its insurance Contractor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.
- 1.7.6.5 Notice of Cancellation or Change of Coverage. All certificates of insurance provided by Contractor must evidence that the insurer providing the policy will give Commission thirty (30) days’ written notice, at the address shown in the section of the Agreement entitled “Notices,” in advance of any cancellation, lapse, reduction or other adverse change regarding such insurance.
- 1.7.6.6 Qualifying Insurers. All policies of insurance required hereby shall be insured by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder’s alphabetic and financial size category rating of not less than A, VII according to the current Best’s Key Rating Guide, or a company of equal financial stability that is approved in writing by County’s Risk Manager, acting on behalf of the Commission.
- 1.7.6.7 Review of Coverage. Commission shall retain the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind of and extent or risk at the time a change in insurance is required.
- 1.7.6.8 Self-Insurance. Contractor may, with the prior written consent of County’s Risk Manager, acting on behalf of the Commission, fulfill some or all of the insurance requirements contained in the Agreement under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance, however, if, in the opinion of County’s Risk Manager, acting on behalf of the Commission, Contractor’s (1) net worth, and (2) reserves for payment of claims of liability against

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Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by the Agreement.

Contractors' utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Agreement. In the event the County's Risk Manager, acting on behalf of the Commission, expressly consents to Contractor's self-insurance program, Contractor shall promptly assume full responsibility for the defense of any and all Claims (as defined in the Indemnity Provision, Paragraph 1.6) against Commission or County upon receipt of notification of any such claim by Commission or County.

- 1.7.6.9 Deviations from Contractual Insurance Requirements. All deviations from the contractual insurance requirements stated herein must be approved in writing by County Risk Manager, acting on behalf of the Commission.

The Commission shall retain the right at any time to review the coverage, form and amount of insurance required herein and may require contractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exist at the time a change in insurance is required. Commission requirements shall be reasonable. Commission retains the right to demand a true and certified copy of any insurance policies required herein after fifteen (15) days notice.

- 1.8 BONDING.** Prior to any disbursements, Contractor agrees that its insurer shall forward to Commission an assurance that all persons handling funds received or disbursements made hereunder are covered by a fidelity bond of twenty-five percent (25%) of the compensation amount identified in Exhibit A or \$25,000, whichever is less. Provision shall be made such that insurer shall notify Commission in the event that the bond is cancelled or reduced. In either event, Commission shall make no further disbursements until it is assured adequate coverage has been obtained. If Contractor fails to obtain or assure Commission of adequate coverage, this Agreement shall be deemed in default and may be forthwith terminated by Commission. This provision applies to each individual contract that the Contractor may have with the Commission or County.
- 1.9 THIRD PARTY BENEFICIARIES EXCLUDED.** This agreement is intended solely for the benefit of the Commission and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this contract any rights whatsoever regarding the performance of this contract. Any attempt to enforce provisions of this contract by third parties is specifically prohibited.

2. CONTRACTOR'S INTEREST

- 2.1 ASSIGNABILITY.** Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the Commission thereto; provided, however, that claims for money due or to become due to Contractor from Commission under this Agreement may be assigned without such approval. Notice of any such assignment or transfer shall be furnished promptly to Commission.
- 2.2 INTEREST OF CONTRACTOR.** Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would prevent the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by Contractor under this Agreement. Contractor shall not hire Commission or County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of Commission or County. Without such written approval, performance of services under this Agreement by associates or employees of the Commission or County shall not relieve Contractor from any responsibility under this Agreement.
- 2.3 SUBCONTRACTS.** Any subcontract which is in excess of five thousand dollars (\$5,000) or a combination of subcontracts to the same individual or firm for the contract period must have prior approval of the Commission's Executive Director. Contractor shall provide the Commission's Executive Director with copies of all other subcontracts relating to this Agreement entered into by Contractor within 30 days after the effective date of the

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subcontract. Such subcontractors of Contractor shall be notified of Contractor's relationship to Commission or County. "Subcontractor" means any entity, other than Commission or County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

2.3.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for insuring the availability and retention of records of subcontractors in accordance with this Agreement. No subcontract utilizing funds from this Agreement shall be entered into which has a term extending beyond the ending date of this Agreement.

2.3.2 Commission Approval. As identified above, all subcontracts under this contract shall have prior written approval of the Commission's Executive Director.

2.4 CONDUCT OF CONTRACTOR. Contractor agrees to inform the Commission of all the Contractor's interest, if any, which are or which the Contractor believes to be incompatible with any interest of the Commission or County.

2.4.1 Personal Gain. Contractor shall not use for personal gain or make other improper use of privileged information which is acquired in connection with performance under this Agreement. In this connection, the term "privileged information" includes, but is not limited to, unpublished information relating to technological and scientific development, medical, personnel, or security records of individuals, anticipated material requirements or pricing actions; and knowledge or selections of Contractors or subcontractors in advance of official announcements.

2.4.2 Gifts and Gratuities. Contractor shall not offer, directly, or indirectly, gifts, gratuity, favors, entertainment or other item of monetary value to an employee of the Commission or County.

2.4.3 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.

2.5 LIMITATION OF FUTURE CONTRACTS OR GRANTS. It is agreed by the parties to the contract that Contractor shall be restricted in its future contracting with the Commission or County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.

2.5.1 If Contractor, under the terms of the contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a primer or subcontractor under an ensuing Commission or County contract. It is further agreed, however, that Commission or County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this contract.

2.5.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

3. COMPLIANCE WITH LAW, REGULATION, AND BOARD POLICY

3.1 AFFIRMATIVE ACTION FOR FEDERALLY FUNDED PROJECTS. Contractor, Contractor's subcontractors and suppliers, if any, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference, unless specifically exempted in accordance with articles, rules and regulations.

3.2 EQUAL OPPORTUNITY. Contractor shall not discriminate against any employee, or against any applicant for such employment, because of age, race, color, religion, sex, sexual orientation, physical handicap, ancestry or national origin. This provision shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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- 3.3 NON DISCRIMINATION.** Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, or physical or mental disability in accordance with Title IX of the Education Amendments of 1972; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), the Age Discrimination of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, and Title 9, Chapter 4, Subchapter 6 (Section 10800, et seq.) of the CCR.
- 3.4 AIDS DISCRIMINATION.** Contractor shall not deny any person the full and equal enjoyment of, or impose less disadvantageous terms, or restrict the availability of, the use of any Commission or County facility or participation in any Commission or County funded or supported service or program on the grounds that such person has Acquired Immune deficiency Syndrome, AIDS-related complex (ARC), or AIDS-related status (ARS), as those terms are defined in Chapter 1, Section 32.1203, San Diego County Code of Regulatory Ordinances.
- 3.5 AMERICAN WITH DISABILITIES ACT (ADA) 1990.** Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 3.6 POLITICAL ACTIVITIES PROHIBITED.** None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither the contract nor any funds provided thereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 3.7 LOBBYING.** Contractor agrees to comply with the lobbying ordinances of the Commission or County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and Federal Legislatures or the Board of Supervisors of the County.
- 3.8 RELIGIOUS ACTIVITY PROHIBITED.** There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 3.9 CONFORMANCE WITH RULES AND REGULATIONS.** Contractor shall be in conformity with all applicable Federal, State, Commission or County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 3.10 CALIFORNIA LAW.** This Agreement shall be construed and interpreted according to the laws and regulations of the State of California.
- 3.11 DEBARMENT AND SUSPENSION.** As a sub-grantee of federal funds under this Agreement, Contractor certifies that it, and its principals:
- 3.11.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency.
 - 3.11.2 Have not within a 3-year period preceding this contract been convicted of or had a civil judgement rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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- 3.11.3 Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 3.11.4 Have not within a 3-year period preceding this contract had one or more public transaction (Federal, State, or local) terminated for cause or default.

3.12 ORAL REPRESENTATION. This Agreement and its exhibits and references incorporated herein fully express all understanding of the parties concerning the matters covered herein. No addition to or alteration of the terms of this Agreement and no verbal understanding of the parties, and officers, agents or employees, shall be valid unless made in the form of a written amendment to this Agreement.

3.13 ALCOHOL AND DRUG USE PROHIBITED. The County of San Diego in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25. This policy provides that all Commission or County employed Contractors and Contractor employees shall assist in meeting this requirement.

3.13.1 As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor employees, while performing service for the Commission or County, on Commission or County property, or while using Commission or County equipment:

- (a) Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- (b) Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- (c) Shall not sell, offer, or provide alcohol or an illegal drug to another person.

Item (c) shall not be applicable to a Contractor or Contractor employee who, as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.

3.13.2 Contractor shall inform all employees that are performing service for the Commission or County on Commission or County property or using Commission or County equipment, of the Commission and County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the Commission or County.

3.13.3 The Commission may Terminate for Default or Breach this Agreement and any other Agreement Contractor has with the Commission or County, if Contractor, or Contractor employees are determined by the County not to be in compliance with the conditions above.

3.14 RESPONSIBILITY FOR COMPLIANCE WITH COUNTY ADMINISTRATIVE CODE, SECTION 67. Contractor agrees to comply with County Administrative Code, Section 67, which stipulates that County shall not contract with, and shall reject any bid or proposal submitted by the person or entities specified below, unless the Board of Supervisors finds that special circumstances exist which justify the approval of such contract.

3.14.1 Persons employed by the Commission or County or of public agencies for which the Board of Supervisors is the governing body;

3.14.2 Profit-making firms or businesses in which employees described in subsection 3.14.1 serve as officers, principals, partners, or major shareholders;

3.14.3 Persons who, within the immediately preceding twelve (12) months came within the provisions of sub-paragraph 3.14.1 and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; and

3.14.4 Profit-making firms or businesses in which the former employees described in sub-paragraph 3.14.3 serve as officers, principals, partners, or major stockholders.

3.15 ZERO TOLERANCE FOR FRAUDULENT CONDUCT IN COMMISSION OR COUNTY SERVICES. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in

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County Services.” There shall be "Zero Tolerance" for fraud committed by contractors in the administration of Commission or County programs and the provision of Commission or County services. Upon proven instances of fraud committed by independent contractors in connection with their performance under the contract, said contract shall be terminated.

- 3.16 ZERO TOLERANCE IN COACHING MEDI-CAL OR WELFARE CLIENTS (INCLUDING UNDOCUMENTED IMMIGRANTS).** The County of San Diego in recognition of its unique geographical location and the utilization of Welfare and Medi-Cal system by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants). This policy shall also apply to Commission contracts and employees.

As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for the Commission or County, on Commission or County property or while using Commission or County equipment shall not:

- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance;
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance.

Contractor shall inform all employees that are performing service for the Commission or County on Commission or County property or using Commission or County equipment of the County's Zero Tolerance Policy as referenced herein.

Commission may terminate for default or breach this Agreement and any other Agreement Contractor has with Commission or County, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.

- 3.17 FAMILY-CENTERED PRACTICE, BOARD OF SUPERVISORS POLICY E-13.** Contractor shall comply with County of San Diego Board of Supervisors Policy E-13, "Family-Centered Practice." Family-centered practice addresses the needs of the whole family and is intended to promote and support community and family involvement to ensure safe and healthy environments for children.

- 3.18 INTERLOCKING DIRECTORATE.** In recognition of County Policy A-79, not-for-profit contractors shall not subcontract with related for-profit subcontractors for which and interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors.

- 3.19 LICENSING.** Contractor shall comply with the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors. All offerors and contractors shall be licensed, if required, in accordance with the laws of this state and any offeror or contractor not so licensed is subject to the penalties imposed by such laws.

- 3.20 PERMITS, NOTICES, FEES, AND LAWS.** Contractor shall, at Contractor's expense, obtain all necessary permits and licenses, give all necessary notices, pay all fees required by applicable law, and comply with all applicable laws, ordinances, rules and regulations relating to work and to the preservation of the public health and safety.

- 3.21 SEVERABILITY.** Should any part of this Agreement be held to be invalid by a court of competent jurisdiction, the remainder of the Agreement shall be considered as the whole Agreement and be binding on the contracting parties.

- 3.22 DELETED**

4. RECORDS AND REPORTS

- 4.1 CONFIDENTIALITY.** Commission, County and Contractor agree to maintain confidentiality of any information regarding applicants, project participants or their immediate families which may be obtained through application

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forms, interviews, tests, reports, from public agencies or counselors or any other source. Without the written permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the audit and evaluation of the Agreement and then only to persons having responsibilities under the Agreement, including those furnishing services to Project under subcontract. Commission, County and Contractor agree that all information and records obtained in the course of providing services to project clients shall be subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations adopted pursuant thereto. However, at Commission's request, Contractor shall permit Commission or County access to all records and information regarding the project and confidentiality shall not be a bar to Commission or County's access to all records and information.

- 4.2 MAINTENANCE OF RECORDS.** Contractor shall maintain and keep available all records within the County of San Diego for a minimum of five years from the ending date of this Agreement unless Commission agrees in writing to an earlier disposition.
- 4.3 CUSTODY OF RECORDS.** Commission, at its option, may take custody of Contractor's client records upon contract termination ***or at such other time as Commission may deem necessary.*** Commission agrees that such custody will conform to applicable confidentiality provisions of State and Federal law. Said records shall be kept by Commission in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 4.4 AUDIT AND INSPECTION.** Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized Federal, State, Commission or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants.

At any time during normal business hours and as often as Commission or County may deem necessary, Contractor shall make available to County, State or Federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit Commission, County, State or Federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement

- 4.4.1** If any services performed hereunder are not in conformity with the specifications and requirements of this contract, Commission shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total contract amount. When the services to be performed are of such nature that the difference cannot be corrected, Commission shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the contract, and (2) reduce the contract price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the contract, Commission shall have the right to either (1) by contract or to otherwise have the services performed in conformity with the contract specifications and charge to Contractor any cost occasioned to Commission that is directly related to the performance of such services, or (2) terminate this contract for default as provided in the Termination clause.
- 4.5 CONFIDENTIALITY OF FINDINGS.** Contractor agrees that any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement which the Commission or County requests to be kept as confidential shall not be made available to any individual or organization by Contractor without prior written approval of the Commission or as required by law.
- 4.6 AUDIT REQUIREMENT.** Contractors shall annually engage a Licensed Certified Public Accountant to conduct an annual audit of their agency's operations. Contractors that expend \$300,000 or more of federal grant funds per year shall have an audit conducted in compliance with Government Auditing Standards, which includes Single

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Audit Act Amendments, Public Law 104-156, and OMB Circular A-133. Contractor shall include a clause in any contract or agreement Contractor enters into with an audit firm to provide access by the Commission or County, State, Federal Government to the working papers of the independent auditor who prepare the audit for Contractor. Contractor shall submit two (2) copies of the annual report and the management letter to the Commission no later than fifteen (15) days after receipt from the independent Certified Public Accountant.

- 4.7 REPORTS.** Contractor shall submit reports as requested by the Commission's Executive Director. Format for the content of such reports may be developed by Commission. The timely submission of these reports is a necessary and material term and condition of this Agreement, and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to Commission within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 4.8 EVALUATION STUDIES.** Contractor shall participate as requested by the Commission in research and/or evaluative studies designed to show the effectiveness and/or efficiency of contractor services or to provide information about Contractor's project.
- 4.9 OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of Commission. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of the Commission. Commission shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.

5. AVAILABILITY OF FUNDS, CHANGES, TERMINATIONS

- 5.1 AVAILABILITY OF FUNDS.** Commission's obligation for payment for any services provided in accordance with this Agreement beyond the current fiscal year end is contingent upon the availability of funds from which payment can be made. No legal liability on the part of the Commission shall arise for payments beyond June 30 of the calendar year unless funds are made available for such performance. Termination cost for fiscal funding will be treated the same as Termination for Convenience.
- 5.2 CESSATION OR REDUCTION OF FUNDS.** Commission shall have the right to terminate this Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or Commission funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, Commission and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between Commission and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.
- 5.3 TERMINATION FOR CAUSE.** Upon breach of this Agreement, Commission shall have the right, by giving written notice specifying the effective date, which shall be not less than five (5) days after the date of the written notice, to terminate this Agreement in whole or in part for cause, which shall include, but not be limited to: (1) Failure, for any reason, of Contractor to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with the approved program and attached conditions, and such statutes, Executive Orders, and Federal directives as may become generally applicable at any time; (2) Submission by Contractor to Commission of reports that are incorrect or incomplete in any material respect; and (3) Ineffective or improper use of funds provided under this Agreement. Prior to the Commission's written notice of termination, the Commission shall give Contractor written notice specifying the reasons for default and giving Contractor 20 calendar days to cure the specified default.

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5.3.1 **Change in Cause.** If, after notice of termination of this contract it is determined for any reason that Contractor was not in default or that the default was excusable. Commission may terminate contract pursuant to paragraph 5.4 Termination of Convenience.

5.4 TERMINATION FOR CONVENIENCE. Commission may terminate this Agreement upon thirty (30) days' written notice to the other party. In that event, all finished or unfinished documents and other materials shall become the sole and exclusive property of Commission. If the Agreement is terminated as provided herein, Contractor shall be compensated for performance until such termination as provided in Exhibits A and D. Contractor hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this paragraph.

5.5 AMENDMENTS. Commission and Contractor may from time to time require Amendments to this Agreement. Such Amendments, except as expressly detailed herein, shall be effective when incorporated in writing to this Agreement and approved by the First 5 Commission of San Diego or the Commission's Executive Director.

5.6 CONSEQUENCES OF TERMINATION. In the event of termination, all finished or unfinished documents, and other materials prepared by Contractor shall become the sole and exclusive property of Commission, and Contractor shall be entitled to receive reasonable compensation for any satisfactory work completed on such documents, or other such materials to date of termination, not to exceed the amounts payable to date of termination reduced by the amount of damages sustained by County by reason of any breach. Notwithstanding the above, Contractor shall not be relieved of liability to Commission or County for damages sustained by Commission or County by virtue of any breach of this Agreement by Contractor, and County may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due Commission or County from Contractor is determined.

5.7 DAMAGES FOR DELAY. If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, Commission shall be entitled to the resulting damages caused by the delay. Damages will be the cost to Commission incurred as a result of continuing the current level and type of service over that cost that would be incurred had the contract segments been completed by the time frame stipulated and any other damages suffered by Commission.

5.8 EXTENSION OF TIME. Commission's Executive Director may, upon written request of Contractor, extend the time for completion of Contractor's performance of this Agreement for a period not to exceed ninety (90) days, in the event performance is delayed due to unforeseeable causes beyond the control and without the fault or negligence of Contractor. Both parties agree that such extension of time does not alter the amount of compensation due Contractor.

5.9 COMMISSION EXEMPTION FROM LIABILITY. In the event there is a reduction of funds made available by Commission to Contractor under this or subsequent Agreements, the Commission or County of San Diego and its Departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.

5.10 FULL COST RECOVERY OF INVESTIGATION AND AUDIT COSTS. Contractor shall reimburse Commission or County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the contract. Reimbursement for such costs shall be withheld from any amounts due to Contractor pursuant to the payment terms of the contract, or from any other amounts due to Contractor from Commission.

5.11 DISPUTES. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Commission's Executive Director who shall furnish the decision to Contractor in writing. The decision of the Executive Director shall be final and

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conclusive unless determined by the court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with the performance of the contract pending the Executive Director's decision.

5.11.1 The "Disputes" clause does not preclude consideration of legal questions in connection with decisions provided for in paragraph 5.12 above. Nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

6. CONDITIONS PREREQUISITE TO PAYMENT

Notwithstanding any other provision of this Agreement, Commission may elect not to make a particular payment on the Agreement if:

6.1.1 Misrepresentation. Contractor, with or without knowledge shall have made any misrepresentation of substantial and material nature with respect to any information furnished to Commission.

6.1.2 Unauthorized Actions By Contractor. Contractor shall have taken any action pertaining to the Agreement that required Commission approval, without having first received said approval.

6.1.3 Default. Contractor shall have been in default under any provisions of this Agreement.

6.2 WITHHOLDING OF PAYMENT. Commission may withhold payments until reports required under this Agreement are received and approved by Commission. Commission may also withhold payment if, in Commission's opinion, Contractor is in non-compliance with the Agreement.

6.3 DISALLOWANCE. In the event Contractor claims and receives payments from Commission for a service, and reimbursement is later disallowed by the Commission or the State of California or the United States Government, Contractor shall promptly refund the disallowed amount to the Commission on request, or at its option, Commission may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement. Similarly, a disallowance under a prior agreement may be offset against this Agreement.

6.4 FULL COMPENSATION. Pending any adjustments, each claim so approved and paid shall constitute full and complete compensation to Contractor for the period covered by the claim. It is expressly understood and agreed that this Agreement constitutes the entire agreement of Contractor and Commission and in no event shall Contractor be entitled to any compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

6.5 PARTIAL PERFORMANCE. In the event less than all services are performed in a proper and timely manner, Contractor shall be paid only the reasonable cost for the services performed for the payment period as determined by Commission's Administrator.

6.6 PERIODIC REIMBURSEMENT. Periodic reimbursement shall at no time exceed 110% of the pro-rata portion of the amount stipulated in Section A, Paragraph 5, for the expired portion of the contract term, unless waived by the Commission's Administrator.

7. METHOD OF PAYMENT

7.1 Contractor shall be paid on a cost-reimbursement basis for actual costs incurred by Contractor.

7.2 Contractor's payments will be generated as follows:

7.2.1 Commission will pay Contractor monthly after receipt of Contractor invoice. Invoices shall list the expenses incurred with back up documentation for such expenses incurred provided that total compensation to Contractor does not exceed \$xxxx. The format of the invoice shall be approved by the Commission.